COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 243 of 2003

New India Assurance Co. Ltd. … **Appellant.**

Versus

Barurandru Pathak
and another. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, (***in short the Act***) against the judgment and Award dated 04-06-2003 passed in M.A.C. Case No. 219 of 2000, Barurendru Pathak Vs. Jaspal Singh & another, by Motor Accident Claims Tribunal Udham Singh Nagar ***(in short the Tribunal)*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.6,23,305/- as compensation along with interest @ 9% per annum as mentioned in the impugned order, in favour of the claimant-respondent No. 1 under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was result of contributory negligence; that there was collusion between the claimant and the owner of the vehicle, therefore, appellant has a right to challenge the impugned award under Section 170 of the Act and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief facts of the case are that the claimant ***(the injured***)sustained grievous injuries in a motor accident on 23.5.1999 due to rash and negligent driving by the driver of Truck No. DIL-4259 with the result the claimant became permanently disabled,

hence the claim petition has been field for compensation by the injured-claimant. The Opposite Parties contested the claim petition by filing their written statements. The appellant-Insurance Company has asserted that the accident was result of contributory negligence on the part of drivers of the offending truck and the tractor and the owner of the tractor should prove that the tractor driver was holding a valid driving licence and other papers. The Tribunal framed necessary Issues in the case. Ultimately, the learned Tribunal came to the conclusion that the motor accident resulting into grievous injuries and permanent disability to the claimant had occurred due to rash and negligent driving by the driver of the offending truck. Finally, the learned Tribunal has awarded compensation of Rs. 6,23,305/- along with interest @ 12% per annum, in favour of the claimant-respondent, as mentioned in the impugned order.

We have heard learned counsel for the appellant, Mr. Tanveer Alam Khan as well as learned counsel for the claimant, Mr. Naresh Pant and learned counsel for the respondent no.2, Mr. Bhupendra Singh and have carefully gone through the entire material on record including the impugned judgment and award.

It has been vehemently argued on behalf of the appellant that on record it is established that the accident in question was result of contributory negligence and the amount of compensation is highly excessive, therefore, the findings of the Tribunal are liable to be set aside. The learned counsel has, however, submitted that there has been collusion between the owner and the claimant; but the contention of the learned counsel is without any basis. We have gone through the entire record. The appellant has been impleaded as O.P.No.2 and the owner of the vehicle is the O.P.No.1 in the case. The owner of the vehicle has contested the case throughout the proceedings and has cross-examined the witnesses of the claimant. The learned counsel has failed to show us permission under Section 170 of the Act having been accorded to the appellant to contest the case on all the grounds available to the owner

of the vehicle or the person against whom claim has been made. There is no finding by the Tribunal that threw has been collusion between the claimant and the owner of the vehicle. It is well settled law that appeal by the Insurance Company can be field on limited grounds. In the present case, it is not open to the appellant-Insurance Company to challenge the findings on the point of negligence or contributory negligence and the quantum of compensation. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C/C. 456 (supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

In the result, the appeal is devoid of any merit and must fail.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with the Court shall be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

01-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP